REPRESENTING CHILDREN IN CONNECTICUT

Prepared by Sharon Wicks Dornfeld

EVIDENCE 101-ADMISSIBILITY

Selected Cases:

State v. Porter, 241 Conn. 57 (1997)

Defendant appealed from court's refusal to admit polygraph results at this criminal trial. Held: Daubert v. Merrill Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993) provides the proper threshold standard for the admissibility of scientific evidence in Connecticut, and polygraph evidence should remain *per se* inadmissible.

Code of Evidence:

§ 7-2. Testimony by Experts

A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.

COMMENTARY

Section 7-2 imposes two conditions on the admissibility of expert testimony. First, the witness must be qualified as an expert. See, e.g., State v. Wilson, 188 Conn. 715, 722, 453 A.2d 765 (1982); see also, e.g., State v. Girolamo, 197 Conn. 201, 215, 496 A.2d 948 (1985) (bases for qualification). Whether a witness is sufficiently qualified to testify as an expert depends on whether, by virtue of the witness' knowledge, skill, experience, etc., his or her testimony will "assist" the trier of fact. See Weinstein v. Weinstein, 18 Conn. App. 622, 631, 561 A.2d 443 (1989); see also, e.g., State v. Douglas, 203 Conn. 445, 453, 525 A.2d 101 (1987) ("to be admissible, the proffered expert's knowledge must be directly applicable to the matter specifically in issue"). The sufficiency of an expert witness' qualifications is a preliminary question for the court. E.g., Blanchard v. Bridgeport, 190 Conn. 798, 808, 463 A.2d 553 (1983); see Section 1-3 (a).

Second, the expert witness' testimony must assist the trier of fact in understanding the evidence or determining a fact in issue. See, e.g., State v. Hasan, 205 Conn. 485, 488, 534 A.2d 877 (1987); Schomer v. Shilepsky, 169 Conn. 186, 191- 92, 363 A.2d 128 (1975). Crucial to this inquiry is a determination that the scientific, technical or specialized knowledge upon which the expert's testimony is based goes beyond the common knowledge and comprehension, i.e., "beyond the ken," of the average juror. See State v. George, 194 Conn. 361, 373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 105 L. Ed. 2d 968 (1985);

State v. Grayton, 163 Conn. 104, 111, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495 (1972); cf. State v. Kemp, 199 Conn. 473, 476-77, 507 A.2d 1387 (1986)...

Practice Book:

P.B. § 13-11. Physical or Mental Examination

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in the party's custody or legal control...

(c) In any other case, such order may be made only on motion for good cause shown to be heard at short calendar. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(d) If requested by the party against whom an order is made under this rule, or who has voluntarily agreed to an examination, the party causing the examination to be made shall deliver to such party a copy of a written report of the examining physician, setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made, or who has voluntarily agreed to an examination, a like report of any examination, previously or thereafter made, of the same condition. The judicial authority on motion may make an order requiring delivery by a party of a report on such terms as are just, and if a physician fails or refuses to make a report the judicial authority may exclude the physician's testimony if offered at the trial.

(e) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives, in that action, or in any other action involving the same controversy, any privilege he or she may have regarding the testimony of every other person who has examined or may thereafter examine the party in respect to the same mental or physical condition.

(f) This section does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other section of this chapter.

P.B. § 25-31 Discovery and Depositions
The provisions of Sections 13-1 through 13-11 inclusive, 13-13 through 13-16 inclusive, and 13-17 through 13-32 of the rules of practice inclusive, shall apply to family matters as defined in Section 25-1.